

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations and Reevaluations

- Letter dated June 26, 2003 to Maryland Department of Education Assistant State Superintendent Carol Ann Baglin, clarifying that (1) the determination of whether a child suspected of having a specific learning disability is a child with a disability must be made by the parents and a team of qualified professionals and (2) it would not be inconsistent with the IDEA for a State to require that the child's parent be afforded the opportunity to provide a statement presenting his or her conclusion regarding the determination of eligibility.

- Letter dated April 10, 2003 to New York State Education Department Deputy Commissioner Lawrence Gloeckler, clarifying that (1) the IDEA statute and Part B regulations reflect the clear and unequivocal intent of Congress to support parents' rights to choose whether their children would be enrolled initially in special education and (2) an individual parent's refusal to consent to the initial provision of special education and related services relieves the State's obligation to provide FAPE to that child until the parent provides that consent.

Topic Addressed: Individualized Education Programs

- Letter dated June 4, 2003 to individual (personally identifiable information redacted), regarding the audio or video recording of IEP meetings.

- Letter dated April 2, 2003 to Sonja D. Kerr, Esq., clarifying that neither the IDEA nor the final regulations (1) address the "write-up" of the IEP (whether or not parents must be physically present when the IEP is written is a State issue) or (2) prohibit the parties from using an IEP developed during a conciliation conference or from making offers of settlement or submitting such settlement offers to a hearing officer or court.

Section 615—Procedural Safeguards

Topic Addressed: Manifestation Determination Review

- Letter dated August 1, 2003 to Vermont Department of Education Legal Counsel Geoffrey A. Yudien, clarifying that (1) nothing in the IDEA statute or regulations limits a manifestation determination review only to the

disability that served as the basis for the eligibility determination and (2) the ten-day timeline set forth in 34 CFR 300.523(a)(2) is not intended to preclude the IEP team from making an appropriate determination that additional evaluations must be completed in order to make a manifestation determination.

- Letter dated March 17, 2003 to New Hampshire Department of Education Consultant Terry Brune, clarifying that, while the IDEA statute and regulations do not address the issue of conducting more than one manifestation determination review for the same incidence of behavior, any new information regarding the incident could be used as a basis for an IEP meeting to reexamine the student's program and placement.

Part C—Infants and Toddlers with Disabilities

Section 636—Individualized Family Service Plan

Topic Addressed: Early Intervention Services

- Letter dated June 30, 2003 to individual (personally identifiable information redacted), clarifying that the regulations implementing Part C require that (1) written parental consent be obtained before conducting the initial evaluation and placement of a child and before initiating the provision of early intervention services and (2) there is no provision authorizing public agencies to use mediation or due process procedures to override a parent's refusal to consent to the initial provision of early intervention or special education and related services.

Section 641—State Interagency Coordinating Council

Topic Addressed: State Interagency Coordinating Council

- OSEP memorandum 03-6 dated April 15, 2003, regarding the requirements for submitting annual performance reports, and clarifying that a single report can be used to satisfy both the Education Department General Regulations and the Part C Interagency Coordinating Council reporting requirements.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities).

Dated: September 16, 2003.

Robert H. Pasternack,
Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03-23975 Filed 9-18-03; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03-262-001, et al.]

Order Announcing Commission Inquiry Into Midwest ISO-PJM RTO Issues

Issued September 12, 2003

Before Commissioners: Pat Wood, III, Chairman; William L. Massey and Nora Mead Brownell.

In the matter of: ER03-262-001, ER03-262-004, ER03-262-005, ER03-262-007, EC98-40-000, ER98-2770-000, ER98-2786-000, EL02-65-006, EL02-65-000 *et al.*, RT01-88-016; The new PJM Companies: American Electric Power Service Corp.; On behalf of its operating companies: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company, Commonwealth Edison Company, and Commonwealth Edison Company of Indiana, Inc. The Dayton Power and Light Company, and PJM Interconnection, LLC, American Electric Power Company, Inc., and Central and South West Corporation, Ameren Services Company, Illinois Power Company.

1. In various proceedings and at a recent technical conference in Wilmington, Delaware,¹ several Midwest and Mid-Atlantic states have supported efforts by their utilities to increase regional coordination by joining regional transmission

¹ This regional technical conference was held on August 28, 2003. See Notice on ("continued") Technical Conference dated August 19, 2003, Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Docket No. RM01-12-000.

organizations (RTOs); other states have opposed or barred these efforts by the same utilities. The Commission and some of the Midwest and Mid-Atlantic state commissioners expressed concerns about the current uncertainty regarding RTO formation in the Midwest and requested Commission action to resolve this uncertainty. In this order, the Commission announces an inquiry into RTO issues related to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection LLC (PJM) to be conducted by the Commissioners, participated in by advisory staff, and facilitated by a presiding administrative law judge in the above-captioned proceedings. The purpose of this process is to gather sufficient information for moving forward in resolving the voluntary commitment made by several entities to increase regional coordination by joining RTOs and establish a joint and common market in the Midwest and PJM region. These entities include American Electric Power Company (AEP), Ameren Services Company (Ameren), Commonwealth Edison Company (ComEd), Dayton Power and Light Company (DP&L) and Illinois Power Company (Illinois Power). While these companies have voluntarily agreed to join either Midwest ISO or PJM, they have not yet fulfilled their commitments.

2. By taking this action, the Commission intends to explore ways to resolve the interstate disputes referenced above and enhance regional coordination to establish a joint and common market in the Midwest and PJM region.

Background

3. On July 31, 2002, the Commission issued two interrelated orders² which were designed to help establish a joint and common market in the Midwest and to support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella and may, depending on their level of independence from market participants, perform certain of the RTO functions in the Commission's Order No. 2000.³ In these orders, the Commission approved

² Ameren Services Company, *et al.*, 100 FERC ¶ 61,135 (2002) and Alliance Companies, *et al.*, 100 FERC ¶ 61,137 (2002), *order on reh'g*, 103 FERC ¶ 61,274 (2003).

³ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *appeal dismissed*, *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (DC Cir. 2001) (Order No. 2000).

the voluntary commitments of certain utilities in the Midwest to either join Midwest ISO or PJM. Because of the necessity for close regional coordination in the Midwest, the Commission also required that Midwest ISO and PJM develop a joint and common market in 2004 that would provide for a seamless market in the Midwest.

4. By order issued April 1, 2003,⁴ in Docket No. ER03-262-000, *et al.*, the Commission conditionally accepted for filing, suspended and set for hearing revisions to the PJM Open Access Transmission Tariff (OATT) that would allow AEP, ComEd, DP&L, and Virginia Electric and Power Company to join PJM. Subsequently, however, the Kentucky Public Service Commission denied transfer of AEP's transmission facilities to PJM.⁵ AEP has also asserted that recently-enacted Virginia law prohibits any firm that is a public utility in Virginia from transferring ownership or control of, or operational responsibility over, any transmission system to "any person" before July 1, 2004 and thereafter prohibits such a transfer without prior approval of the Virginia State Corporation Commission.⁶ At the same time, state legislation in Ohio and Michigan requires that AEP join an RTO. Also, by order issued March 15, 2000,⁷ in Docket No. EC98-40-000, *et al.*, the Commission conditionally approved the merger between AEP and Central and South West Corporation (CSW), provided that AEP fulfill its commitment, set forth in that proceeding, to join an RTO.⁸ The uncertainty concerning AEP joining PJM has also resulted in uncertainty in the timing for ComEd and DP&L joining PJM. Requests for rehearing and compliance filings are pending in these proceedings.

5. Illinois Power had originally proposed to join PJM. However, it subsequently has indicated that it may instead seek to join Midwest ISO. Illinois Power currently does not have an application on file with the Commission to join either RTO.

⁴ American Electric Power Service Corporation, *et al.*, 103 FERC ¶ 61,008 (2003).

⁵ See Answer of Edison Mission Energy, *et al.*, to Exelon Corporation's Comments on AEP Responses to FERC Data Requests, filed August 1, 2003.

⁶ See AEP's Report on Compliance with Transmission-Related Merger Conditions, filed February 28, 2003 (AEP's February 28 Compliance Report).

⁷ American Electric Power Company, and Central and South West Corporation, 90 FERC ¶ 61,242 (2000).

⁸ See Stipulation of American Electric Power Co., Central and South West Corp. and Commission Trial Staff at 2-4, Docket Nos. EC98-40-000 *et al.*, (May 24, 1999).

6. Finally, Ameren had proposed to join Midwest ISO as part of GridAmerica LLC (GridAmerica). The Commission has recently received an application for GridAmerica to join Midwest ISO on October 1, 2003.⁹ However, at that time, GridAmerica would not include the facilities of Ameren.

Discussion

7. The Commission will hold an inquiry into RTO issues related to the Midwest ISO and PJM to be conducted by the Commissioners, participated in by advisory staff, and facilitated by a presiding administrative law judge. As noted above, the purpose of this inquiry is to gather sufficient information to move forward in resolving the commitment made by several entities to establish a joint and common market in the Midwest and PJM region.¹⁰

8. With regard to these utilities, this inquiry will explore the impediments to these utilities in joining Midwest ISO or PJM and proposals for resolving those impediments. We note that the uncertainty regarding the Midwest-PJM participants is delaying the benefits to customers of greater voluntary coordination among utilities, and thus hindering the timely development of a joint and common market in the Midwest and PJM region, and the benefits of reliability that will result from such a market. Order No. 2000 adopted initially a voluntary approach to RTO formation which allows capturing reliability benefits, including regional infrastructure planning.

9. We direct Midwest ISO, PJM, North American Electric Reliability Council, AEP, Ameren, ComEd, DP&L and Illinois Power to have a senior company official who can represent these entities as well as make decisions on behalf of the company present at the inquiry. We invite representatives from the affected states, including state commissions, to this inquiry. We invite Canadian parties who will be impacted by the common market to this inquiry, as well.

10. We direct AEP, Ameren, ComEd, DP&L and Illinois Power to submit the following information in the form of pre-filed testimony by one or more witnesses by September 23, 2003: specify the impediments to their voluntary commitments to join RTOs;

⁹ See Filing by GridAmerica Participants and Midwest ISO dated August 28, 2003, in Ameren Services Company *et al.*, Docket No. ER02-2233-010, *et al.*

¹⁰ At this time, we intend to focus on the Midwest and the gaps in the Midwest. Thus, because Virginia Electric and Power Company is not in the Midwest, we are not including them as part of this inquiry at this time.

and propose solutions to these impediments, including Commission actions necessary to move the process forward to establish a joint and common market in the Midwest and PJM region in an expeditious manner. This pre-filed testimony will be subject to cross-examination by the Commissioners and advisory staff at the hearing specified below. Any other interested parties may file similar testimony.

11. The inquiry will be held on September 29 and 30, 2003, from approximately 9 a.m. to 5 p.m. in Hearing Room 1 of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Commissioners will attend and participate in the discussions. We direct the Chief Administrative Law Judge to appoint an administrative law judge to preside over the two-day inquiry, including swearing in witnesses, ruling on the admissibility of evidence and objections, etc. The presiding administrative law judge's involvement will be limited to the two days of hearing, and the Commission will take appropriate future action, as early as the October 22, 2003 meeting.

The Commission orders:

(A) The Secretary is hereby directed to publish this order in the **Federal Register**.

(B) AEP, Ameren, ComEd, DP&L and Illinois Power are hereby directed to file the information discussed above by September 23, 2003.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), the administrative law judge designated by the Chief Administrative Law Judge, shall preside over this inquiry, as discussed in the body of this order.

(D) This inquiry shall be held on September 29 and 30, 2003, in Hearing Room 1 of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03-24086 Filed 9-18-03; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6644-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 2003 (68 FR 16511).

Draft EISs

ERP No. D-AFS-J65389-MT Rating EC2, North Belts Travel Plan and the Dry Range Project, Provision of Motorized and Non-motorized Recreation, Helena National Forest, Broadwater, Lewis and Clark and Meagher Counties, MT.

Summary: EPA has environmental concerns regarding potential water quality effects and inconsistency of road management with TMDL development for impaired surface waters and potential adverse effects to wildlife habitat, security and connectivity with Alternatives 1, 2 and 3. EPA believes Alternatives 4 and 5 or a new modified alternative with reduced environmental effects should be considered as the preferred alternative. EPA supports inclusion of road, trail and watershed improvements in the preferred alternative, and believes additional information is needed to fully assess and mitigate all potential impacts of the management actions.

ERP No. D-BLM-K70009-CA Rating EC2, West Mojave Plan, Habitat Conservation Plan and Federal Land Use Plan Amendment, Implementation, California Desert Conservation Area, Portions of San Bernardino, Kern, Inyo, and Los Angeles Counties, CA.

Summary: EPA expressed environmental concerns and recommended additional mitigation measures to further protect desert tortoise and riparian/wetland and stream functions.

ERP No. D-COE-C39016-NJ Rating EC2, Union Beach Community Project, Provision of Hurricane and Storm Damage Reduction to Residential, Commercial and Recreational Resources, Located along the Raritan Bay and Sandy Hook Bay Shoreline, Monmouth County, NJ.

Summary: EPA had environmental concerns and requested that the final EIS include additional information on the wetlands mitigation plan and a Clean Air Act General Conformity Applicability Analysis.

ERP No. D-FHW-C40159-NJ Rating EC2, Penns Neck Area Transportation Service Improvements, Phase I Archeological Survey, U.S. 1, Sections 2S and 3J, Funding, West Windsor and Princeton Townships, Mercer County, and Plainsboro Township, Middlesex County, NJ.

Summary: EPA has environmental concerns with the proposed project's impacts regarding stormwater runoff, surface waters and vehicular traffic.

ERP No. D-FHW-D40093-PA Rating LO, City of Lebanon Bridge Over Norfolk Southern Railroad Tracks Construction Project, 12th Street to Lincoln Avenue, Funding, Lebanon County, PA.

Summary: EPA does not have objections regarding the proposed project.

ERP No. D-FHW-D40321-PA Rating EC2, Woodhaven Road Project, Traffic Congestion Reduction on Byberry Road between Roosevelt Boulevard and Huntingdon Pike, Funding, Philadelphia, Bucks and Montgomery Counties, PA.

Summary: EPA has environmental concerns regarding avoidance and minimization of the proposed project's impacts to surface waters and wetlands, forested habitats and environmental justice areas.

ERP No. D-FRC-L05200-OR Rating LO, Bull Run Hydroelectric Project (FERC No.477-024), Proposal to Decommission the Bull Run Project and Remove Project Facilities including Marmot Dam, Little Sandy Diversion Dam and Roslyn Lake, and an Application to Surrender License, Sandy, Little Sandy, Bull Run Rivers, Town of Sandy, Clackamas County, OR.

Summary: EPA supports the selection and implementation of the Settlement Agreement alternative including FERC staff recommended modifications as it will result in long term environmental benefits.

ERP No. D-NRC-E06022-SC Rating EC1, Generic—License Renewal of Nuclear Plants, Virgil C. Summer Nuclear Station, Supplement 15, Fairfield County, SC.

Summary: EPA notes that while the impacts of the project appear to be within acceptable limits, the plant will need to continue radiological monitoring of all effluents and the appropriate storage and disposition of radioactive waste during the license renewal period.